



**AN ETHNOGRAPHIC ANATOMIZATION OF MEDIA TRIAL VIS-À-VIS ITS  
CHALLENGES AND IMPACT ON THE JURIDICAL ADMINISTRATION AND  
PSYCHOLOGY OF THE PEOPLE IN INDIA**

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**ABSTRACT**

Media is often regarded as the fourth pillar of a democracy. It is essential for a society to survive and grow, to have a free and independent media without any pre-censorship. Our constitution also protects the rights of media and they are granted with freedom of liberty, speech and expression under fundamental rights. But from the past few decades it has been witnessed that media has started conducting parallel media trial which is a gross contempt of law and violation of free trial and natural justice. The researchers through this paper have evaluated the effect of media trial and has corroborated with the concept of the trial. This research carefully compares and highlights the imbalance created due to excessive media trial with the violation of constitutional rights, criminal law and morality of the person. At the end the researcher recommends various measures which can prevent the misuse of law through media trial and restrict media trial to a considerable limit, without violating the autonomy of media at the same time.

**Key Words** – Media Trail, fair trial, presumption, pre-trial, natural justice, Constitution.

**RESEARCH METHODOLOGY**

The research work done in this study is doctrinal in nature and is qualitative research. Doctrinal research methodology, which is used in this paper, includes various legal principles and concepts, of all kinds, such as case laws, legal statutes, commentaries etc. The researchers have also studied various decisions of the Supreme Court and High Court for this paper. The paper includes Qualitative research of various National and International books, and journals on the same topic.

**INTRODUCTION**

Media plays a paramount role, who acts as a pillar which doesn't have legal sanctions like others but works silently in connecting all three organs<sup>1</sup> with one other and to the general public. It is essential to have media, as it talks about pros and cons of government and criticizes and appreciate the government for its policies.

Media in India is free as compared to the other countries in the world. Its historical growth can be found in 18<sup>th</sup> century as this was initially discussed in British government parliamentary debate<sup>2</sup>. As said by Jean Jacques Rousseau, "*thought and speech are born free*

<sup>1</sup> Judiciary, Legislature and Executive.

<sup>2</sup> Justice V Ramkumar, *THE FOURTH ESTATE AND THE NEED IF ANY, FOR ITS EMPOWERMENT*, Trial by Media, (9 Sep 2016 5.23 PM) <https://livelaw.in/trialbymedia/>

but everywhere they are in chains”<sup>3</sup>, and it is also stated in Indian constitution article 19(1)<sup>4</sup>, the validity of pre-censorship was declared void.

Democracy can function properly when the media, including all its forms, has the liberty to freely express its opinion and though along with showing the facts without any interference. Also, the fundamental right and freedom also denotes that they have right to question the authorities without any fear of loss. There can be no freedom if a person cannot express his thoughts and beliefs to another.

Society develop and succeeds only when there is no vigilantism from any side of government whether it is legislature, executive or judiciary, also it should be under care of public opinion where the role of media also becomes crucial<sup>5</sup>. Media is expected to utilize its freedom from pre-censorship in order to promote awareness among the general public so they are able to form a liberal and unbiased opinion of the matter, instead of promoting an ideology and instigating the thoughts of public at large. Pamphlets and circulars are also part of freedom of press as it is not bound by only newspapers and periodicals.

In a landmark judgment regarding the press’s functionality, the court observed that press freedom needs to be executed in the literal sense and in the same way it is mentioned under article 19 (1) (a)<sup>6</sup>. It is the obligation of honourable court to maintain its validity and nullifying all the administrative actions which interrupts the working of media and is against constitutional validity<sup>7</sup>.

In another landmark pronouncement of Supreme Court, it was clearly stated that sale tax shall not be levied upon sale of newspaper in the country, as it was a sole mediator between general public and government works. Moreover, the apex court also rationalised that media is also not be free from general laws applied on other enterprise such as taxation, industrial law or any other regulations made by states for employees.

When the government imposes censorship on a journal before its publication, this is termed as to breach of freedom of press. The validity of censorship issue was raised in a case where court clearly quashed the government order and coordinated that pre-censorship of news is a type of limiting the freedom of the press<sup>8</sup>.

The idea of democracy becomes meaningless if it does not have a free, neutral and active media<sup>9</sup>. With incredible power comes a huge duty, so it moves toward becoming obligation of media to stay fair and the negative effect of media trial should be maintained a strategic distance<sup>10</sup>.

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<sup>3</sup>E M Ome, “*The theory of freedom in Jean Jacques Rousseau: A critical assessment*”, Sophia: An African Journal of Philosophy, Vol 14, No 2 (2014)

<sup>4</sup> MP Jain, *Indian Constitutional Law*, LexisNexis; Eighth edition, (4 February 2018)

<sup>5</sup> Ibid

<sup>6</sup> Express newspaper v. Union of India, 1986 AIR 515, SCR (2) 287

<sup>7</sup> Harijai Singh & others v. Unknown, AIR 1997 SC 73, 1996 (2) ALD Cri 906, 1997 (1) ALT Cri 148, 1997 (1) BLJR 907, 1997 CriLJ 58, JT 1996 (8) SC 332, 1996 (6) SCALE 728, (1996) 6 SCC 466, 1996 Supp 6 SCR 411, (1996) 4 UPLBEC 2787

<sup>8</sup> MP Jain, *Indian Constitutional Law*, LexisNexis; Eighth edition, (4 February 2018)

<sup>9</sup> Zillmann D (2002) *Exemplifications Theory of Media Influence, Media Effects: Advances in Theory and Research*. Lawrence Erlbaum, Mahwah, New Jersey, 2<sup>nd</sup> edition, (2002)

<sup>10</sup> Dr. Bharati Das, *Importance of Independent Media in Democracy*, Scholar’s Voice : A new Way of Thinking, Vol. 2, No. 1, January-June 2011, 43-49

## NEED OF POWERFUL MEDIA AND POSITION OF MEDIA TRIAL IN INDIA

The term free media implies that the media despises any power bigger than that of the overall population whom they speak to. As it were, the media is liable to every one of the limitations which each individual from the overall population is liable to. Truth be told, the columnist is saddled with greater duty since what he says or composes is probably going to impact people in general to a more prominent degree than what a customary native says or composes.

In India the right to speak freely and articulation incorporates the opportunity of press. As it has been expressed previously, the opportunity of press is an essential right, which is surrounded by specific confinements. The specialist of the media to direct a Trial falls inside the extent of the right to speak freely and articulation. So, in India the idea of media Trial is pervasive and is picking up significance and fame. The idea of media Trial in India isn't as expansive as the idea existing in the United State of America; neither it is as prohibitive as the idea of media Trial in England. Moreover, the extent of media Trial in India lies in the middle of the degree winning in the United State of America and in England. The idea of media Trial in India is old and was pervasive even before the year 1961 because around the same time the Supreme Court has remarked on the idea of media Trial in an important judgement<sup>11</sup>. The court had plainly said that it would add up to fiendishness if a paper as to lead a free examination of criminal activities. The results of such a media Trial would be grave and influence the entire administration of justice as it will in general reason a bias to the gatherings associated with the case. The court also gave the dicta that media trial often causes interference and hindrance in the way of justice.

The point to be noted here is that the impressions of the court regarding the media Trial call attention to the way that the idea of media Trial won and still, after all that. In those days media Trial was directed for the most part through press, as alternate stations of media, for example, TV and other electronic modes were not in vogue for the local use. The media Trial won in an unclear and not in an exceptionally efficient way. The media Trial has turned out to be abruptly exceptionally well known and is frequently depended on in the twenty first century. One thing here must be noticed that the media Trial ought not to be mistaken for the media Trial. The media activism implies where the media brings up the treachery in the general public and guarantees that proper procedures have been started. The accompanying cases will guarantee that how media has assumed a critical job in administering the Justice. These cases likewise demonstrate that, had the media been dormant at that point, how the culprits of wrongdoing would have got without any penalty.

It is paramount for a society to be free from all kind of radicalism and manipulation of facts in the spreading of news. It means that the events should be in direct corroboration of the facts stated in the media in form; print, social and electronic. The case of *M.V Jayarajan*<sup>12</sup>, was one in which the media was both acknowledged just as scrutinized. Acknowledged for the helpful job in bringing the objectivity of the facts of the case discussed in the court; scrutinized for its job in having a discourse and open discourse of the issues which were sub judice.

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<sup>11</sup> Saibal Kumar v. B.K Sen, (1961) SCR (3) 460

<sup>12</sup> Re M.V. Jayarajan, (1988) 545 Kerala HC

## **SOME POSITIVES EFFECTS OF MEDIA**

### **1. JESSICA LAL CASE**

This case was a landmark achievement of media<sup>13</sup>. Here the accused belonged to an influential family and in the trial all the key witness turned hostile and evidence were also manipulated. In this matter media showed great efforts and despite political pressures exposed the inaccuracies in the trial and witness, resulting in the conviction of the accused.

### **2. PRIYADARSHINI MATTOO CASE**

In this matter again, the accused was the son of a high-ranking police official of Delhi<sup>14</sup>. The deceased was a law student and was victim of rape and murder by the accused. The police was also blamed of helping the accused but due to media pressure and highlight, the case investigated with full transparency and the accused was convicted.

### **3. NIRBHAYA CASE**

The infamous December 2012 Rape case<sup>15</sup> which gained the attention of entire nation was also a major highlight of the media. Through these many things were highlighted and came out such as mentality of the society, present outlook of the men even after so much of advancement, and this also put pressure on the legislature to bring amendments in the criminal law<sup>16</sup>.

### **4. SPS RATHORE CASE**

It was case which exposed the misuse of power of bureaucracy. A senior official of Police was charged of molesting a young tennis player. She, after facing a lot of harassment from the authorities committed suicide. After a long trial of more than two decades due to lack of evidence the accused was released from the court. Although the accused did got away from the eyes of court but the data, evidences and zeal of the deceased family with the help of media did put the accused to a big shame<sup>17</sup>

### **5. SANJEEV NANDA CASE**

It was a famous hit and run case, where the accused had killed many poor people sleeping on the streets. Again, initially due to lack of evidence the accused the victim was saved by his legal team, but later when the media exposed the negligence of the police, the case was again conducted with proper support of the legislature. This case showed the power of Media, which did put pressure on legislature and executive on the public demand<sup>18</sup>. It was the case where media helped the judiciary trying to regain the faith of people in it.

### **6. STING OPERATIONS AND EXPOSURE OF SCAM**

A sting operation has recently become a weapon to use by investigating agencies as well as media to unheard the truth and catch the accused red-handed. The case of match Fixing scandal of 2000<sup>19</sup>, Operation Westend 2001<sup>20</sup>, Gujarat Riots Report 2002<sup>21</sup> are few of the famous sting operation conducted by media to expose the dark truth of the society.

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<sup>13</sup>Siddhartha Vashistha @ Manu Sharma v. State, (2010) 6 SCC1

<sup>14</sup>State (Through Cbi) v. Santosh Kumar Singh, CriLJ 964, 133 (2006) DLT 393

<sup>15</sup>State through Reference v. Ram Singh & others, AIR 2014 DHC 1398

<sup>16</sup>The Criminal Law (Amendments) ACT, 2013

<sup>17</sup>S.P.S Rathore v. CBI, (2016) SCC 2126

<sup>18</sup>State v. Sanjeev Nanda, (2012) 8 SCC 450

<sup>19</sup>Mahender Singh Manral, Nihal Koshie & Sandeep Dwivedi, Hansie Cronje match-fixing scandal: Sanjeev Chawla, the one that got away, The Indian Express, December 23, 2018 at A1

<sup>20</sup>Online Edition, Operation West End, The Hindu, March 20, 2001 at A2

<sup>21</sup>Sanjoy Majumdar, Narendra Modi “allowed” Gujarat 2002 anti-Muslim riots, BBC News, 22 April 2011, at A1

## 7. BIG POLITICIANS AND FILM ACTORS HAVE TO BOW DOWN DUE TO MEDIA PRESSURE.

The case of Late CM Jayalalitha<sup>22</sup> and Salman Khan<sup>23</sup> are prime example where media played a big role to make sure the executive authorities did not temper with evidence and the trial was also repeated in a transparent way till their conviction.

### GENESIS AND HISTORICAL DEVELOPMENT OF MEDIA TRIAL

Media Trial is another idea which has accumulated the mindfulness of the whole noticeable legal adviser and the scholarly individual with expert in the general public. As it is a typical mindset of society that individuals will in general appreciate the life of other individuals.

When one looks back at the time of Doordarshan News, there used to be one or two anchors that used to just deliver the news without any much emotional angle attached to it, which is still seen at RS TV and LS TV, contradictory to the present time where the TRP race<sup>24</sup> and advertising business holds the main priority. Now due to commercialisation in news agencies, the sensationalization or exaggeration of facts of news are given bigger priority in order to gain more attention. This has given birth to a new type of parallel judicial system known as Media Trial in 20<sup>th</sup> Century.

The Media Trial has its own share of influence, impact and features which has helped the three organs of government but has also invited its own share of criticism in abundance. Due to the outreach of Media to general public on a large scale along with the lesser understanding of common people regarding the court proceeding, the institution of Media Trial has led to ruining the image of an accused, creation of biases in the mindset of public, pre-judging, influencing the mindset of judicial officer, along with the distortion of the maxim "*Audi Alterm Partem*"<sup>25</sup>. The new very important concepts of Courts namely "*Presumption of innocence until proven guilty*" and "*guilt beyond reasonable doubts*" takes a back seat and even after Honourable acquittal by court, the accused remains dishonourable in the eyes of public, hence takes the seat of victim instead of acquitted.

The two aspects of criminal jurisprudence on which the culpability is based are "Presumption of innocence, unless proven guilty by a competent court" and "The parameter for proving the guilt is "beyond reasonable doubt". These principles find no place in the trial by media. Here, media becomes an agency who puts the stigma of guilty of crime on any person before the verdict of court. The apex court in one of its judgments held that no person should be punished unless his/her crime is proved beyond reasonable doubts<sup>26</sup>. In it's another judgment the apex court held that no innocent person should be punished and further gave the dicta that even if hundred people escapes the gallows, but one innocent should not be hanged<sup>27</sup>. Here the media openly violates these two principles and go on to ruin the image of person for its own commercial benefits.

One of the first victims of Media Trial was famous comedian of USA, Roscoe Arbuckle, who was charged with many serious offences such as rape in early 1920s. Even after winning the

<sup>22</sup>State Of Karnataka v. Selvi J. Jayalalitha & Ors, (2017) SCC 300

<sup>23</sup>Salman Khan v. State And Ors, 2001 (2) WLC 535, 2007 (3) WLN 324

<sup>24</sup> Neetu Bhargava & Dr. Pardeep Balhara, TELEVISION NEWS CHANNEL ARE DEGRADING THE QUALITY AND STANDARDS OF INDIAN JOURNALISM, International Journal of Multidisciplinary Research, Vol. 2, Issue – 2 (2017)

<sup>25</sup> Ratanlal & Dhirajlal, *The Indian Penal Code*, Lexis Nexis; Thirty Third edition (2012)

<sup>26</sup> Zahira Habibullah v. State of Gujarat 7 Others, (2004) 4 SCC 158

<sup>27</sup> State of UP v. Naresh, (2001) 4 SCC 324)



case, he lost his reputation and his career due to the excessive media coverage his case received, which also violated his fundamental right to privacy<sup>28</sup>.

The famous Nanavati case, also known as first case which was influenced by Media, in post-independence of India on a large scale and also which led to abolition of jury system from the judicial fraternity also showed that how media trial urge the emotion of the public and justice is manipulated over emotions. Here a murder trial was covered in a way that the accused of a murder case, even after being convicted, was later acquitted, just because the sympathy of public was with him. In this case all the principles of criminal and constitutional law such as “mens rea”<sup>29</sup>, “actus Reus”<sup>30</sup>, “and equality of law”<sup>31</sup> and “equal protection of law”<sup>32</sup> were defeated by emotions.

This is becoming a common phenomenon in recent times with the development of technology combined the commercial aspects. The positive side was seen in *Jessica Lal case*<sup>33</sup>, *Priyadarshini Mattoo case*<sup>34</sup>, the infamous *Damini Case*<sup>35</sup>, but what forms the main crux is that apart from exception it has led to more negativity in ruining images, career, and creating biases which were seen in *Aarushi Talwar case*<sup>36</sup>, *Sanjay Dutt Case*<sup>37</sup>, *Zaira Wasim case*<sup>38</sup>, *Rohtak Sisters Case*<sup>39</sup>, and very recent *Jasleen Kaur Case*<sup>40</sup>. In many dowry cases<sup>41</sup> and fake rape cases<sup>42</sup> where the persons blamed is as of now announced liable by the general public much under the steady gaze of the court's decision, and media assumes a critical job in pulverizing the protection and notoriety of the charged. Media Trial and coverage also plays a big role in indirectly supporting the anti-government agencies which was seen in *26/11 attack case*<sup>43</sup>. Media Trial has further instigated a phenomenon where due to pre-judging, parallel public courts, political influence and biases led to questioning of fair trial of courts by public and creating violent and seditious mindset among a section of society, towards the plurality of our country and certifying our judiciary incompetent<sup>44,45</sup>. In order to gain popularity and increase in commercial aspect of their enterprise **media trial** tends to supersede the “principle of fair trail” justice, and transparency of our judiciary.

Another enthralling case from USA where the acquittal was challenged by the media where the “admissibility of evidence” of CCTV cameras was put to question by media which were not admitted to court due to technical reason and it led to further confusion. These types of

<sup>28</sup> Justice K.S. Puttuswamy v. Union, (2017) 10 SCC 1

<sup>29</sup> Ratanlal & Dhirajlal, *The Indian Penal Code*, Lexis Nexis; Thirty Third edition (2012)

<sup>30</sup> Ibid

<sup>31</sup> MP Jain, *Indian Constitutional Law*, LexisNexis; Eighth edition, (4 February 2018)

<sup>32</sup> Ibid

<sup>33</sup> Siddhartha Vashistha @ Manu Sharma v. State, (2010) 6 SCC1

<sup>34</sup> State (Through Cbi) v. Santosh Kumar Singh, CriLJ 964, 133 (2006) DLT 393

<sup>35</sup> State through Reference v. Ram Singh & others, AIR 2014 DHC 1398

<sup>36</sup> Nupur Talwar v. CBI, (2012) 111 SCC 465

<sup>37</sup> Sanjay Dutt V. State of Maharashtra, (1995) SC 567

<sup>38</sup> PTI, *Zaira Wasim molestation case: Arrested executive gets bail*, Deccan Chronicle, Dec 21, 2017 at A1

<sup>39</sup> DNA web team, *Rohtak sisters case: Three accused cleared of charges*, DNA India, Mar 7, 2017

<sup>40</sup> ANANYA BHARDWAJ, *Why Delhi woman behind viral post on “molestation” didn’t appear in court for 3 years*, The Print, Sep 17, 2018

<sup>41</sup> Amit Anand Choudhary, *No arrest in dowry cases till charges are verified, Says Supreme Court*, TOI, July 28, 2017, at A2

<sup>42</sup> IndiaToday.in, *53.2 percent rapes cases filed between April 2013-July 2014 false, says DCW*, India Today, Dec. 29, 2014 at A3

<sup>43</sup> S Ahmad Ali, *26/11 attack: Media Pulled by Supreme Court for its role*, TOI, Aug 31, 2012 S Ahmad Ali, *26/11 attack: Media pulled by Supreme Court for its role*, TOI, Aug 31, 2012

<sup>44</sup> State v. Md. Afzal Guru, (2003) DLT 385

<sup>45</sup> Yakub Abdul Razak Memon v. State Of Maharashtra, (2013) SCC 1728

trial not only pose a real problem to the legal system as the Evidence law clearly defines the admissible evidence, circumstantial evidence, primary and secondary evidence but also creates strong belief in the mindset of the public regarding the inefficiency of the court. Here the public fails to realise that all these digital evidences whose main purpose was to help the investigation and to keep a check or record are more prone and has potential to distortion and manipulation.

### WHAT IS MEDIA TRIAL?

According to Justice V Ramkumar, the term “*Media Trial*” or “*Trial by media*” is itself incorrect and lacks accuracy and authenticity<sup>46</sup>. This term is not defined in any procedural laws of India whether criminal or civil.

The word “trial” is defined as “*trial means any hearing before the Court at which evidence is taken*”<sup>47</sup>. This clearly indicates that trial means the proceeding which is conducted before the Court of law. Then going by this legal definition there cannot be any trial by media.

The apex court once gave the loose definition and impact of “trial by media” as a “Trial” where a “*perception of being guilty*” is created even the judgement is actually given which ultimately harms the reputation of the accused<sup>48</sup>. This is mostly seen during high profile matters the role of media is too just the report the matter of court proceeding as it is, but they end up creating an atmosphere where the public itself becomes a mob lyncher and fair trial becomes impossible. The result is that irrespective of the judgement the accused is already declared guilty in the eyes of general public and the fellow accused is not able to live his life without any further public scrutiny. The case of Talwar couples<sup>49</sup> is a prime example of this type of pre-judging. Another case which attracts the same line of thought is the murder of a journalist. It was alleged by the media that an IPS officer had a sexual affair with deceased and also has a role in the murder. The said officer was arrested, and all this was done due to media pressure which unfortunately influenced the administration. It is to be taken into cognizance that the person sitting at a powerful rank is also a human and is also subject to pre-judging, due to the large influence of media. The accused was later acquitted in 2011 but had to spend 9 years of his life in prison<sup>50</sup>. Thus, the media here also ruined a life of a dignified officer.

This term is a result of intense commercial competition between the agencies. The media has exemption in defamation laws under Indian criminal law<sup>52</sup>. They are just expected to address the public about the regular court proceeding and to furnish the information through which the general public can understand how judicial system works and the procedure of application of various laws. But the lateral aspect of reporting, where the law is vague, where the media houses start big debates, discussion, self-investigation, opinion poll, interviewing the parties along with their advocates regarding particular case results its creation. “Irrespective of the motive of the origin, now these kinds of trial are done in order to increase the TRP and other

<sup>46</sup>Justice V Ramkumar, THE FOURTH ESTATE AND THE NEED IF ANY, FOR ITS EMPOWERMENT, Trial by Media, (9 Sep 2016 5.23 PM) <https://livelaw.in/trialbymedia/>

<sup>47</sup> Section 2(7) of The Bankers Books Evidence Act 1891

<sup>48</sup> R.K Anand v. Delhi HC, (2009) 8 SCC 106 (Para 293)

<sup>49</sup> Nupur Talwar v. CBI, (2012) 111 SCC 465

<sup>50</sup> State v. Ved Prakash @ Kalu, AIR 2011 Delhi HC 357/2008

<sup>51</sup> NDTV Correspondent, Shivani Bhatnagar murder: Former police officer Ravi Kant Sharma Acquitted, NDTV, Oct 12, 2011

<sup>52</sup> Indian Penal Code, Section 120, (1860)

commercial value of the media<sup>53</sup>, which again further leads to general discussion of matter within public without proper and accurate knowledge. The people of society get saturated and influenced due to few cases and it is one of the few reasons why the apex court approved the live telecast of court proceedings<sup>54</sup>.

The media trial is also described as “*antithesis of law*” and is rightly expected to till to “*miscarriage of justice*”. The Court also held that the media is expected to be watchful to the case in silence when any important case is taken up for investigation. The failure of on the part of media on such matters often quenches the public curiosity about the case which makes the investigation difficult and invites unnecessary public scrutiny<sup>55</sup>.

Concluding it, one can say this is a kind of trial which is a result of the gap between the silences of law, inaccessibility of proper information of case to public and the curious mindset of public. It does have certain exemption<sup>56</sup> but it also has their share of limitation in their power, liberty and right. There is a limit to their exemption under the defamation laws and although ignored, but it must be taken into consideration that any person, including the Press, if criticises a person, other than constructive criticism, who has committed no offence or has received honourable acquittal from the court of law then the same person or the body of person violated the person right to privacy<sup>57</sup>, right to reputation, defamation and contempt of court<sup>58</sup>.

## THE NECESSITY OF FAIR TRIAL BEFORE JUDICIARY

Unlike Civil Law, Criminal law has all together a specific motive. It not only has to deal with the remedial part but must deal with punitive part. In criminal law, the crime is not committed against the individual, but against the State, that's why the provision of compromise between the parties is non-existent. This is done through the procedural medium mentioned in the procedural laws under which a fair trial is given to all the accused.

A fair trial, being the fundamental right of the individual, has two specific objectives of its own. The trial is required to be just and fair to both the parties to the case<sup>59</sup>. The defeat or miscarriage of justice can arise in both the situation from acquitting the guilty and also in convicting the innocent. In any criminal trial the judge not only checks that no innocent is convicted but it is also the foremost duty of the judge to make sure that no guilty man escapes the clutches of law<sup>60</sup>. A criminal trial is extremely crucial for any society as it is meant to provide justice to three parties which are accused, victim, and the society.

Few of the golden paramount aspects which has been taken into consideration by the administration of justice, that two alternate hypotheses is possible on all the evidence collected by the court; with one directing towards conviction and another in the direction of acquittal. In the end views which is favourable in the eyes of court is accepted<sup>61</sup>.

The above tenet has been set down on a thought that advantage of uncertainty is constantly given to the respondent and not to the petitioner, so the use of conditional proof additionally

<sup>53</sup> Mr. H. Naresh Rao & Dr. B.K. Ravi, Audience Perception of Credibility of Local News Channels, International Journal of Scientific and Research Publications, Vol 5, Issues 2, (2015)

<sup>54</sup> Swampil Tripathi v. Supreme Court of India, AIR 2018 SCC 1232 (India)

<sup>55</sup> State of Maharastra v. Rajendra Gandhi (1997) SCC 2510

<sup>56</sup> Contempt of Court Act, Sec. 3(2), sub clause (B) of Clause (a), (1971)

<sup>57</sup> Justice K.S. Puttuswamy v. Union, (2017) 10 SCC 1

<sup>58</sup> Supra 55

<sup>59</sup> T.H Hussain v. M.P Modkakar, (1958) SC 376

<sup>60</sup> Krishnan v. Krishnaveni, (1997) 4 SCC 241

<sup>61</sup> Kaliram v. State of Himachal Pradesh, (1973) SCR (1)



ends up urgent<sup>62</sup>. That is the reason when court does not locate any solid proof against the charged then the court doesn't convict the blamed and gives him advantage for uncertainty, which is inverse in the trial by media.. In the media trial the accused is declared guilty first and then the trial and discussion start. A skimpy doubt or any confession made voluntarily or involuntarily accused to the investigating authorities; which is not admissible by the court of law under the criminal procedure<sup>64</sup>; are enough material to sensationalise the matter and takes to the different level altogether which is parallel to the facts collected in the court for the purpose of "BREAKING NEWS".

## CONSTITUTIONALITY OF MEDIA TRIALS

The apex court in its various judgements has recognised the purview of freedom of press is vital<sup>65</sup> and regarded as extremely important<sup>66</sup>. It was also observed by the honourable apex court that the same right also includes acquisition and communication of ideas and information related to matter of public interest<sup>67,68,69,70</sup>.

- **Press having Immunity under contempt of court** – The press has certain immunity under contempt of Court laws<sup>71</sup>, regarding pre-trial publication. Because the trial has not started it does not fall under the matter of sub-judice nor is termed Pending, in any case. This was widely seen in the case of Sanjay Dutt<sup>72</sup>, where the entire media labelled him as a terrorist even before the judgement of court. The judgement of the court was drastically opposite to accusations made. A few acts by media and its trial such as publications, speculation on hearsay evidence, blaming even before the arrest is made puts a bid threat on the administration of justice.
- **Public participation:** The trial by media has been excused that they simply express the sentiment of people in general. Transparency is an integral part of any democracy and without an independent and free press; the society tends to revert into the Dark Age. A famous English thinker Jeremy Bentham, while dealing with secrecy in the administration of justice suggested that it tends to bring darkness and shapes the interest of society in the evil manner. He promoted the idea of publicity and suggested that justice has direct proportionality to publicity to a certain extent and keeps the judge to himself<sup>73</sup>. It is also important that the media also remains objective while dealing with such peaceful discussion by the public instead of getting subjective. But it is observed that as the commercial aspect is attached to all the media houses, the media promotes its own subjective analysis of the matter which tends to impact the mindset of public as well the puts unnecessary pressure on the judge.

<sup>62</sup> Indian Evidence Act, Circumstantial evidence (1872)

<sup>63</sup> KD Kaur, Textbook on the Indian Evidence Act, Lexis Nexis Publication; (First edition) (1 December 2016)

<sup>64</sup> Criminal procedure Code, Section 162 (2) (1973)

<sup>65</sup> Express newspaper v. Union of India, (1986) SCR (2) 287

<sup>66</sup> Re: Vijay Kumar (1996) 6 SCC 466

<sup>67</sup> Secretary, Ministry of information and Broadcasting v. Cricket association of West Bengal, (1995) SCC 161

<sup>68</sup> Romesh Thapar v. State, (1950) SCR 594

<sup>69</sup> LIC v. Manubhai Shah, (1992) SCC 267

<sup>70</sup> Hamdard Dawakhana v. Union, (1996) SCC 354

<sup>71</sup> Contempt of Court Act, Section 3 (1971)

<sup>72</sup> Sanjay Dutt V. State of Maharashtra [1995] SC 567

<sup>73</sup> K.G Balakrishnan, The Constitution; The Media and the Court, The fourth K.S. Rajamony Mmemorial Public Law Lecture, Kerala, [www.supremecourtindia.nic.in/new\\_links/9%5B1%5D.8.08.rajamony.pdf](http://www.supremecourtindia.nic.in/new_links/9%5B1%5D.8.08.rajamony.pdf)

- **Inadequate laws overseeing journalistic code of conduct and ethics:** The Press Council of India enjoys disapproval power. If someone thinks that any media house has conducted a professional misconduct and the Press council corroborates with complainant, then they can direct that media house to publish contradiction in their upcoming issues<sup>74</sup>. In any case, the escape clause emerges on the grounds that these measures must be taken once the news is distributed and it doesn't include cruel disciplines, thus winds up inadequate. These faults were highlighted and were taken into cognizance by honourable apex court<sup>75</sup>. The said section<sup>76</sup> only authorises the council to warn and censure the with newspapers and lacks jurisdiction in electronic media. Lack of punitive powers to council restricts the functioning of council in the matter of wrong publications. All in all, the PCI also has criminal disdain forces to limit the circulation of one-sided media reports. In any case, the PCI can simply practice its hatred controls just in the issues examined in court<sup>77</sup>.

## **TRIAL BY MEDIA AND FAIR TRIAL**

The Supreme Court explained the term “fair trial” in one of its judgements<sup>78</sup>. It stated that a fair trial means, if a case has an unbiased and neutral judge, an upright and competent prosecutor, and an undisturbed ambience of justice. It means that bias, prejudice against the accused or witness should not be there. The media, at many instances becomes self-declared judges. Trial by media involves sensationalization of the facts along with its distortion, pre-decided notion of the judgements, and a lots of publicity stunts. Media trial violates the spirit of fair justice as it exponentially increases one’s inclination towards concluding the case into consideration.

Media trial creates a dilemma and problem between two conflicting principles of law that is free press and free trial. Both these principles invite great interest of the public and here the media takes the advantage and justifies most of its unconstitutional acts. The honourable Supreme Court in another judgement observed that no occasion should arise for publicity where basic principles of criminal jurisprudence are violated until the accused is found guilty<sup>79</sup>.

While looking at the international context of the two principles one can find that these two principles are protected everywhere. While referring to independences of judiciary, UN Basic Principles in Article 6 discusses the rights of parties and ensures fair trial<sup>80</sup>.

## **A CRITICAL ANALYSIS OF NEGATIVE IMPACTS OF MEDIA TRIAL**

In the initial times, news coverage was restricted to delivering the news and it was in the race of TRP for the purpose of various advertisements, sponsors and deals. So, the news writers, editors and other staffs used to work with all the moral ethics, conviction and bravery. There was thus, little scope of corruption, and the work was done in order to explore the exact facts of the news and used to give their own independent and free thoughts without any biases and partiality. The scope of discriminatory presentation of the case or any pressure from government or their media masters was less evident.

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<sup>74</sup>Press Council Act, Section 14(1) (1978)

<sup>75</sup>Ajay Goswami v. Union of India, (2007) 1 SCC 143

<sup>76</sup>Contempt of Court Act, Section 3 (1971)

<sup>77</sup>State of Maharashtra v. Rajendra Gandhi, (1997) (8) SCC 386

<sup>78</sup>Zahira Habibullah v. State of Gujarat 7 Others, (2004) 4 SCC 158

<sup>79</sup>Anukul C Pradhan v. Union, (1996) SCC 354

<sup>80</sup>Un Basic Principles on the Independence of the Judiciary, Article 6, (1985)

The trial by media has given them an alternative self-appointed job. Today, the media trial is used by people of one ideology or a political camp to serve their own ends at advantage and demoralise the opponents. The sting operation done by media does help a bit to the investigating agencies, but it is more utilised for the publicity purpose. The mala fide intention can be seen that one media house tends to exposé people of their opponents, thus intention to uncover the truth again falls behind. The public too fails to see the reason behind all these and tends to believe them, which ultimately leaves a big impact on their mindset. It further leads to give a media house an audience which then tends to follow them regularly and believe all their reports, discussion blindly and hatred is generated in their minds for their opponents, which is eventually bad for any democracy.

Reporting any matter which is *sub-judice*<sup>81</sup> is not allowed to any media house, but due to large investments of corporate and big political leaders, the media fearlessly report all the *sub-judice* matters, publicly, which tends to hamper the court of law, its ethics, morality, transparency, decision making and question is raised by public without knowing the proper procedures and facts of the cases. This type of reporting and trial gives rise to communal tension which was observed in the case of Afzal Guru<sup>82</sup> and Yakoob Memom<sup>83</sup>. It is essential to put in check the partial exposure of the topic pending in the court. The Rohtak Sister Case<sup>84</sup>, where a video clip was circulated showing that two girls man handled two boys for allegedly molesting them. These girls were later awarded for their bravery and a lot of discussion was done related to security of woman. It was later found out that these girls did this act to gain publicity and the accused were acquitted by the court but unfortunately till then it was too late as they lost their reputation and job in army. It is one of the cases where media trial in sub-judice matter ruined the life of two young people. The media often transcends its right by publishing the photos, confession, and character, of the accused in the matter of sub-justice. It leads to an atmosphere of disharmony and lack of trust in the eyes of public for judiciary. The media instead of reporting this matter in the objective way circulated the names and photographs of the victim and generated lots of publicity<sup>85</sup>. The honourable High Court of Delhi went to fine all the Media houses for this illegal and unconstitutional act as the contempt of court for using the name and photos of victim<sup>86</sup>. The reporting of the rape case in the valley had very harmful results, as the whole society was divided. One group unfortunately just vehemently denied the happening of the case; one group openly supported the culprits blaming this to the revenge of Exodus of Kashmiri Pundits<sup>87</sup>; another group tried to stop the investigation of SSP and also the Bar Council didn't support the Lawyer who was fighting for the deceased victim<sup>88</sup>; one group made an unconstitutional violent religious group

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<sup>81</sup>Justice V Ramkumar, RESTRCITION ON REPORTING ISSUES WHICH ARE "SUB JUDICE" THE FOURTH ESTATE AND THE NEED IF ANY, FOR ITS EMPOWERMENT, Trial by Media, (9 Sep 2016 5.23 PM) <https://livelaw.in/trialbymedia/>

<sup>82</sup> Supra 44

<sup>83</sup> Supra 45

<sup>84</sup> Supra 39

<sup>85</sup>PTI, Supreme Court to examine Kathua Gangrape and murder case, TOI, May 21 2018 at A1

<sup>86</sup>Delhi HC punishment for Asifa for leaking photos

<sup>87</sup> PTI, Kathua Rape Case: Media Houses apologise for revealing victim's identity, Business Standard, April 18, 2018 at A1

<sup>88</sup> Akansha Jain, Kathua Gangrape Case: Media Houses apologises Before Delhi HC for revealing Victim's Identity, told to pay Rs 10L each towards J&K Victim Compensation Fund, April 18, 2018, Live Law, <https://www.livelaw.in/kathua-gangarape-case-media-houses-apologise-delhi-hc-revealing-victims-identity-told-pay-rs-10l-towards-jk-victim-vo,mpesnsaation-fund/>

in order to support the culprit<sup>89</sup>; the political parties took various stands to gain publicity, and the media just for the sake of publicity kept on bringing different stories in their parallel trial to keep the public interest in the matter. Interestingly it was later revealed that the lawyer who was trying to fight the case for the deceased used this media trial to gain publicity<sup>90</sup>; and justice for the deceased was lost in all this chaos.

The trial by media along with the provision of free speech and free trial, along with its corroboration with the criminal procedural laws was discussed by Law Commission in its report<sup>91</sup>. This report primarily focused on many aspects which put bad influences on the entire machinery such as pre-judicial coverage of crime and its impact on administration of justice.

## **SOCIAL IMPACT OF MEDIA TRIAL**

- **LOSS OF REPUTATION AND DIGNITY**

Due to the increasing fake case of dowry and rapes, a lot of injustices have started in the society. The media instead of actually going in the depth of the matter tends to sectionalise the matter and the victim in most of the cases becomes the accused and after a long battle in the court and even after getting the justice from the court, still they fail to regain their lost dignity and reputation. In this kind of matter a doubt is created in the mind of people regarding the acquitting of the accused and the victim remains the accused for the rest of his life in the society. It is unfair to ruin the image of the accused by sensationalising the facts and creating an impression that the accused is guilty before the judgement of court. The alleged accused or suspect gets negative publicity, and even after acquittal the future remains uncertain.

- **FAKE PUBLICITY**

The media trial has also become a tool for fake publicity for both common citizen and also for celebrities. Recently a famous actor Zaira Wasim accused a man for molesting her in the flight. Instead of reporting the matter to the police she chooses to upload a video on social media. It created a lot of publicity for her and she received lots of attention and support, but later it was proved to be inaccurate, but it did damage the image of a respectable person.

- **BAD IMPACT IN THE MINDSET OF THE SOCIETY**

The foremost duty of the media is to educate people regarding all aspects of the matter, but the growing media trial tends to have a bad impact on the mindset of the people and make them believe the system is strong; resulting in biases, prejudice, rigid thoughts along with communal and caste hatred<sup>92</sup>.

- **INCREASE IN DISSENT AND INTOLERANCE IN THE SOCIETY.**

As one of the important roles of media is to educate people, these kinds of trial most of the time, has an adverse effect in their thought process. The dissent shrinks in the mindset of the society, and the intolerance rises. Recently there was an attack on the CRPF in Phulwara<sup>93</sup>; recently an Indian air force pilot was captured in Pakistan, there he refused to share any

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<sup>89</sup> Krishna Kumar, Raj Thackeray slams BJP for “backing rapists” in Kathua rape case, Economic Times, April 15, 2018, at A1

<sup>90</sup> Aarti Singh, Kathua rape victim’s kin want lawyer out, TOI, Nov 15 2018,

<sup>91</sup> Law Commission of India Report on “TRIAL BY MEDIA FREE SPEECH AND FAIR TRIAL UNDER CRIMINAL PROCEDURE CODE, 1973”, AUGUST 2006 (200<sup>th</sup> Report)

<sup>92</sup> James Goodale, Impact of Media on Fair Trial Rights: Panel on Media Access, Fordham Intellectual Property, Media and Entertainment Law Journal, Vol 3 Article 4 (1993)

<sup>93</sup> IANS, India has taken revenge for Phulwara: Father of a slain CRPF trooper, The Economic Times, Feb. 26 2019 at A3

information but Indian media showed his family, his home and their feeling on TV again putting the international reputation of country at stake<sup>94</sup>; the media conducted the trial in such a way that, there was a feeling of hatred for the people of Kashmir valley generated all over and attack on innocent Kashmir people all over India increased. These kinds of act generally hamper the analytical abilities of the society and they fail to reason with the government regarding the misuse of AFSPA, aperture in the Defences and most importantly why the people of Kashmir are turning hostile towards India<sup>95</sup>.

- **CRITICISM OF WITNESS**

The criticism of witness to trial; pre-trial or trial, hampers the social security of the witnesses. The security of the witness is put to grave risk by the trial conducted by the media. Not only have their lives come into danger but also their reputation. It is also an essential reason why many people fail to report a crime to police, in order to avoid being victimised as a witness by the media trial. Hence again the justice delivery system is affected due to lack of protection of witness.

## **POLITICAL IMPACT OF MEDIA TRIAL**

- **SECURITY OF THE STATE**

It is also seen that these kinds of media trial have also put the security of the State at risk on many occasions. The famous media trial of 26/11 case and the parallel trial conducted exposed a lot of loopholes of the functioning of the administration not only to the public but also to the enemy states. In these kinds of trials many retired government officials are invited and whether for publicity or for in the heat of moment they tend to discuss on a lot of confidential issues.

- **POLITICAL VENDETTA AND INCREASE IN RELIGIOUS VIOLENCE**

Media Trial has also become a tool for political vendetta and in the name of sting operation one media house tries to expose and insult the members of other political parties. It is very common to see the ideological mindset and support of one media house today through its media trial and reporting. So, the main objectives of the media are diminished, and the political vendetta takes the priority, hence losing its credibility of reporting. The sting journalism where many video clips are leaked of politicians is leaked into the media and their charters are questioned instead of their work has become very common. It does have a bad impact on the mindset along with the violation of the privacy. Sting operation has also proved to have created many hurdles for the actual investigation agencies. Many times, the police are made the scapegoat. The over enthusiasm of the media most of time puts enormous pressure on police to speed up the investigation hence compromising with the procedural aspects and arrest of innocent people.

- **SABARIMALA CASE**

An important judgement, where the media instead of providing the exact and complete information regarding the facts and judgements of the case, projected the judgements as man vs. Woman and also according to wish of all the political masters<sup>96</sup>. So, the result which was supposed to be accepted peacefully by the public and the dissent was also assumed to be

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<sup>94</sup> **THE CITIZEN BUREAU**, Indian Media Sinks to New Low: Gives Information About Ace Pilot Varthaman That He Himself Denied Pakistani Interrogators, The Citizen, 28 FEBRUARY, 2019

<sup>95</sup> Naseer Ganai, 25 years on, AFSPA remains a dirty words in Jammu and Kashmir, India Today, July 9, 2015

<sup>96</sup> Indian Young Lawyers Association v The State Of Kerala, SCC 373 (2018)



constructively discussed ended up being politically motivated protest across the nation. It further instigated communal politics causing more harm to the unity in diversity of the nation.

➤ RAM MANDIR CASE

The media played a crucial role in politicising the matter<sup>97</sup>. It is one of the important matters related to security of the state in all aspect; social, political, legal. The way many of the media houses conducted the trial after Shah Bano judgement<sup>98</sup> accelerated the communal hatred between the people and resulted in demolition of the disputed structure and instigated many riots<sup>99</sup>. The media was expected to restrict themselves to the objectivity of the facts of case, but they conducted regular trial and kept on asking the public regarding their views on the matters and questioned the intention of the court; hence keeping the communal matter alive in the mind of people.

## **LEGAL-ECONOMIC-TECHNOLOGICAL**

- LOSS OF EMPLOYMENT

As discussed above, there is an adverse effect on the employment of the accused before being convicted. In the Jasleen Kaur Case, a simple argument on the road became a scandalous issue on the social media and the alleged victim became the symbol of oppression. In the trial by media she gathered a lot of attention and publicity, resulting in loss of reputation for the alleged accused along with loss of employment. In the course of trial in the court it was revealed that the alleged victim never visited the court on hearing for 3 years and the alleged accused suffered the loss of employment. These kinds of media trial have given rise to vexatious mentality where many women tend to misuse the laws, knowing that they will have the societal support and it results in loss of jobs to the alleged accused, as no one gives jobs to such media declared guilty peoples<sup>100101</sup>.

- LOSS OF CAPITAL TO ANY FIRM OR ENTERPRISE

Today media has a big outreach in the entire field. A simple blame of bribery or corporate misconduct is heavily discussed in the media trial without proper sanction or with complete information resulting in loss of huge number of share and capitals to the concerned enterprise.

- LOSS OF PRIVACY

These media trial ignores the fact that privacy is a fundamental right of the individual and is protected in the constitution<sup>102</sup>. These media trial not only subjectively discusses the case if the individual but also many things which is not at all required or related to their matters about the individual such as habits, character, conducts, choices, jobs of the individuals<sup>103</sup>.

- INFLUENCING THE JUDICIAL OFFICER

The judiciary is also run by the human beings and he too is subject to commit human error. It is established that every judicial officer makes sure that he/she is not influenced by the media

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<sup>97</sup> Suhas Munashi, Journalism Amidst Communal Passion, News 18, Dec. 7 2015 at A2

<sup>98</sup> Subhashini Ali, "Shah Bano Judgement was a landmark in our social and political history." India Today, Dec 26, 2005

<sup>99</sup> KD Sutar, 25 years of Bombay riots: How the mayhem changed a city and its people forever, India Today, Dec 7 2017

<sup>100</sup> Fatima Khan, No jobs for us: Haryana men thrashed by sisters say clean chit for sexual abuse hasn't helped, The Print, 6 October, 2018 at A1

<sup>101</sup> Sat Singh, Sonapat sister's case: Accused denied permission to sit in army written exam, Hindustan Times, Jan 8, 2015

<sup>102</sup> Justice K.S. Puttuswamy v. Union, (2017) 10 SCC 1

<sup>103</sup> Nupur Talwar v. CBI, (2012) 111 SCC 465

reports but as in the nature of a human being it is natural to affect his sub conscious thinking about a matter. It is impossible that a person doesn't let an iota of doubt to be created for what he has seen, read or heard. The judiciary will only become truly independent when its functioning is done in the absence of all the popular as well as the public opinion.

The apex court too held that they are subconsciously influenced by the media publicity<sup>104</sup>. No judge is fit enough, not to be affected by what he hears or peruses and judges are likewise people and will in general have an impression with respect to a specific issue or issue. The justice further expressed that it is particularly basic for a judge to execute the assignment of directing the justice without declining himself from his oblivious and sane contemplations. There have been numerous reports showing that judges are probably going to be impacts by the preliminary directed by the media. In one of the important matters related to dowry death of a woman, the husband of deceased woman and his parents were charged and arrested for the crime of abetment of dowry death. The bail was dismissed by the lower court even before the beginning of trial lastly the supposed Due to this; sporadically does anyone look towards judiciary for the damage done by the media trial? Accused was given interim bail by Supreme Court. After the trial it was held that the deceased has psychological disorder and that was the reason for her death. It was observed by the apex court that the lower judiciary was highly influenced by the articles published in magazines declaring them guilty and further stated that these types of publication does affect the administration of justice<sup>105</sup>. These kinds of media trial disregard the fundamental basic standards of Common law that justice ought to not exclusively be given yet it ought to likewise be seen to done as needs be<sup>106</sup>.

- INVESTMENT OF BIG CORPORATE AND POLITICIANS IN THE MEDIA HOUSES.

The corporate culture and investment have taken deep roots in many important fields such as education, healthcare and now in the Media. Everyone has observed the increase in the standard but corporate culture is profit motive. If the important areas of human life, such as education, healthcare and now media comes under entirely then poor people will never have access to their basic rights. There is no sensational media trial conducted by Lok sabha TV, Rajya Sabha TV, Prashaar Bharati and their news delivery system is literal and objective manner, contradictory to the reporting of private news channels who are owned by corporate and politicians<sup>107</sup>, whose main function is to generate TRP, advertisement for profit motive going against the Journalists morals and ethics.

- IGNORANCE OF LAW

The media through its trial many times report a matter in a way where it completely ignores the scope and application of many aspect of procedural laws defined in Criminal law. This is mostly seen while reporting the case related to death penalty. The media just after the judgement given by trial court do not wait for the judgement if high court and deliver the verdict themselves.

## **THE PERPLEXITY AND PROBLEMS OF VICTIMS OF MEDIA TRIAL**

Unfortunately, the functioning of our system is such that, until and unless it is solicit or pleaded; it does not voluntarily act for the remedy of the victim. Despite the tall claim

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<sup>104</sup> Reliance Petrochemicals v. Proprietor of Indian Express (1988) SCC 592.

<sup>105</sup> M.P Lohia v. State of west Bengal, (2005) SCC 686

<sup>106</sup> R v. Sussex : Exparte McCarthy, (1924) KB 256

<sup>107</sup> Vanita Kohli-Khandekar, When politicians own the media, Business Standard, January 24, 2013

regarding legal aid, access to justice, speedy trial, it is in the knowledge of everyone that justice delivery mechanism is extremely time consuming, expensive by the concerned authorities. Due to this, sporadically does anyone look towards judiciary for the damage done by the media trial? As the justice delivery process is slow in the courts, it is very much essential that victimisation of the people needs to be protected. It can only happen when the judiciary and legislature channelize their energy in bringing a law for the restriction of media trial. As the accused may get acquitted honourable from the court but the damage of media trial is so enormous that he/she is not able to retain his old reputation again in the society.

One of the essential obligations of the court comes in the pending matters because here the under-trial's reputation and privacy comes at risk. But due to excessive media trial even if the accused is subject to a fair trial, the reports the hype sub consciously effect the judgements and it will be subject to biases and prejudice, as the judge himself is a human and is also subject to human errors. In these kinds of situations, the person being the judicial officer must refrain himself from getting much influence from the media reports and put the media into check from conducting a parallel trial.

### **RIGHTS OF VICTIMS OF MEDIA TRIAL**

The victim of the media trail has the right to fair trial protected in the constitution against publication, violating his/her right to dignity and privacy. The aggrieved party has the right to approach a Writ Court (Supreme Court and High Court) and seek order for the banning or rescheduling the reporting of offending publication or adjourning the broadcasting of certain phrase in the news of the trial which includes his identity<sup>108</sup>. The court can grant such kinds of relief, if the court is in the notion that these kinds of relief is for shorter period or till the completion of trial.

Moreover, it must be applied exclusively when the case is real and there is a grave risk of prejudice and biases due to publication in the genuine administration of justice and fairness of trial. The victim also has the right to be forgotten<sup>109</sup>.

### **A CONTEMPT OF COURT**

Media Trial is a Contempt of court as well as contempt of journalism ethics and invites punishment. The proper definition of contempt of court is seen in both civil<sup>110</sup> and criminal<sup>111</sup> cases. Media trial merges all kinds of act such as scandalising, prejudicial trial and causing hindrance to administration of justice. Through this, it meddles with the legal procedure and damages the standards of regular justice of fair trial read that justice must not exclusively be done but it should be observed to be done. Contempt of court prevents unfair trial so that no publication poisons the minds of judicial officer or intimidates the witness or defaming a party to trial<sup>112</sup> and no editor takes the role of investigators or tries to prejudice court against any party of the case<sup>113</sup>. It was additionally seen by Honourable High Court of Andhra Pradesh that legit remark about a case or involved with the case, regardless of whether the

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<sup>108</sup> Justice Ahmadi, Interrelationship Between law, media and the Judiciary, Vol 4-7, 1997-2000, United Lawyers Association p. 75

<sup>109</sup> ARUNIMA BHATTACHARYA, In a First An Indian Court Upholds the "Right to Be Forgotten" Live Law, Feb 3, 2017, <https://www.livelaw.in/first-indian-court-upholds-right-forgotten-read-order/>

<sup>110</sup> Contempt of Court, Section 2(b) (1971)

<sup>111</sup> Contempt of Court, Section 2(a) (1971)

<sup>112</sup> Subash v. S.M Aggarwal, (1984) Cri LJ 481

<sup>113</sup> DM v. MA Hamid, (1940) Oudh 137

individual making that remark trusts it to be genuine will add up to scorn of the case and contempt of court<sup>114</sup>.

## RECOMMENDATIONS

### 1. AUDIT OF PRIVATE MEDIA HOUSES MEDIA HOUSES

As there is a lot of investment from corporate and politicians, a proper audit needs to be conducted related to their reporting and finance by members consisting of independent constitutional and extra judicial bodies such as CAG, Prashar Bharati, TRAI, Central Vigilance Commission, Press Council members with experience of media and retired civil. The prospective body by the way of amendments can be created in a shorter duration, with investigation and recommendatory purpose; answerable only to the High Court and the Supreme Court. This will not amount to judicial overreach as they are just an investigating body and will submit report to court. This will bring down false reporting by a large scale as the government cannot interfere in the court proceeding, this body will not interfere in their reporting or try to act as vigilant but will only audit their work after they finish. This step will reduce the ineffectiveness of punitive measures of Press Council.

### 2. DUTY OF MEDIA TO BE ANSWERABLE

A few media houses today after gaining a lot of fame tend to identify themselves as the ambassador of a particular ideology and over a significant time span, and looking for their clarification for the supposed demonstrations or exclusions, demonstrates the bothersome, if not poisoning the propensity of infringing into the directly to peace of mind of a person and tend to show his responsibility just to the people in power. Under the pretext of dispersing data to the public at large these channels cannot deny their duty to be answerable to the public. The questioned by media to the accused is moulded in such a way that the accused gets anxious, oblivious and confused while answering; hence portraying his negative image to the public through an unauthorised cross-examination and malicious prosecution. There is a quick need to administer guidelines for the media to be responsible to the court and to general society, failing to which will invite suspension on any news conveyance, fine and imprisonment on the anchors for defaming the accused under criminal law<sup>115</sup> and fine on the board of directors for the contempt of court<sup>116</sup>.

### 3. RESTRICTION OF REPORTING ISSUES WHICH ARE "SUB JUDICE"

Usually, reporting matters to sub judice usually go unchecked due to non-availability of administrative mediation. The government must clear the ambiguity regarding the word "pending" in the Contempt laws in order to avoid its misuse and its corroboration with the procedural laws of India and inspiration can be drawn for foreign laws, if required.

The expression "Sub Judice" signifies "Under a Judge or a legal thought". As held in different decisions, so as to end up a matter of sub judice, it is fundamental that the criminal case is enrolled with an approved expert, the examination has been begun by the procedural standards and continuing has additionally been started in the court, and after that if there is altering, printing or distributing of news identified with that issues it generally sum to influence and disregards the standards of reasonable trial of the denounced. However, inner conflict stimulated because of "pending" referenced in the segments of disdain laws. The articulation "pending" must be expressed, till the charge sheet is submitted in the court or

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<sup>114</sup> Hanumantha Rao v. K.R Pattabhiram, (1975) AP 30

<sup>115</sup> Indian Penal Code, Section 120 (1860)

<sup>116</sup> Contempt of Court Act, Section 2&3 (1971)

when the demand is issued by the court. Here the media exploits the provisos and distributes its report expressing it be either in pre-trial stage or in as indicated by the sources. Also, the possibility of sensible trial isn't held too primer under the watchful eye of the Court. It consolidates the period of examination excessively to fuse sensible and snappy examination inside the ambit of sensible starter. Any novel comprehension can incite heinous outcomes. Thus, increasing the ambit of criminal law and contempt is has becomes very much crucial in order to put these illegal trials under check.

The law commission in its report suggested a remedy for this by amendment in Contempt act, along with the conformity with the judgement of apex court<sup>117</sup>. The protection of reputation must be guaranteed and fair trial which should be just, fair and reasonable and must in "due process" as held in another case by apex court<sup>118</sup>. As suggested by law Commission our legislature can take inspiration from U.K., where the trial is treated as "active" and not "pending". By amending in criminal procedure and contempt laws, one can restrict the media reporting the matter under sub-judice and the confusion will be cleared. The criminal proceeding must define the proceeding as "active" immediately after the arrest and media must be directed not to report further on such matters and this must be further amended in all the matters. Through this many reputation can be saved from social outcast.

#### 4. THE NEED TO IMPROVE REGULATORY MEASURES – PRESS COUNCIL AND CONTEMPT OF COURT

The laws dealing with contempt of court needs more focus along with the substantive and procedural laws of the land. The contempt of court which is mostly applied on lawyers should have equal ambit to the media houses. As of now the media comes only when after reporting the matter and the court takes up as Suo moto cognizance; but strict guidelines need to be taken by Higher Judicial authorities in order to prevent the pre-judicial the reporting of matter of sub-judice.

The Supreme Court has furthermore set down benchmarks and guidelines on statutory course of action compelling repression on major rights when it is tried on the ground of outlandishness<sup>119</sup>. The apex court held that with corroborating with views of foreign judge that disdain of court law is an insurance given to make a decision just as to the work they perform<sup>120</sup>.

There have been instances where all the people related to publishing a derogatory remark about a high court judgement, were sentences six months imprisonment and the apex court upheld the verdict of High Court sending strong messages regarding contempt of court<sup>121</sup>. Besides, it was likewise held that no one has the option to reprimand a judge for his lead aside from the division approved<sup>122</sup>.

#### 5. COMPULSORY TRAINING FOR MEDIA PERSONNEL IN THE FIELD OF LAW BY VARIOUS GOVERNMENT OFFICERS AND INSTITUTES IN MEDIA LAW.

As examined, that opportunity of media like all other basic right is liable to limitation. And yet is additionally important that appropriate preparing is given to media staff about sacred law, media law, morals, human rights, maligning law, disdain laws and its application from

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<sup>117</sup> AK Gopalan v. Noordeen, (1969) SCC 734

<sup>118</sup> Maneka Gandhi v. Union, (1978) SCC 597

<sup>119</sup> Papnasam, labour Union v. Mathura Coats Ltd, (1995) SCC 501

<sup>120</sup> Pennekamp v. Florida, (1946) US 331

<sup>121</sup> Rajendra Sail v. M.P High Court Bar Association, (2005) SCC 109

<sup>122</sup> D.C Saxena b. CJI, (1996) SCC 216



the perspective of media. The government needs to make such training compulsory and organise training session where the government officer and institutes provides them training and only after completion of compulsory training and attaining government certified diploma in Ethical Journalism and law, such person should be allowed to join media houses.

#### 6. REDEFINING OTHER TERMS IN LAW

This is also very crucial to amend the definition of word “publication” of all form in the contempt laws with proper vigilance of higher judicial authorities. This will further help the government to take preventive and punitive measures against the media houses by postponing their publication without violating any fundamental rights or any other real threat of prejudice to the fair trial.

### **CONCLUSION**

At the end we can concludes that along with the legislature it is also the duty of the members of society to be aware of all the facts. Education does provide a platform to a person to grow but without wisdom education is of no use. The media knows the fact that we are more interest in the spicy aspects of the matters, our interest and mentality, and that is why despite of all the judgements and the laws we tend to get attracted towards these kinds of immoral acts of media. It is our interest, our outlook towards all the aspects of life from victim blaming, pre-judging, and judging someone on his/her past which encourages these media to use these kinds of tactics for their commercial gain. One must realise that these acts grows only because we tend to follow them, and we all become a mob-lyncher after the media uses its weapons of media trial. We need to grow in our subjective analysis and need to focus on the objectivity of the matter, only then we would find these acts as uninteresting. It is accepted that this change will require a lot of time and it will come gradually, until then the government needs to be more vigilant with the media so that all the people gets fair trial and the faith in judiciary is maintained. The opportunity has already come and gone that administration needs to concoct laws for the security from media preliminary and the standards of assumption to guilelessness until demonstrated blameworthy past sensible uncertainty is ensured and the charged isn't sentenced according to society under the steady gaze of the decision of court.